IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
LETTERS PATENT APPEAL NO. 81 OF 2007
IN
WRIT PETITION NO. 1049 OF 2007 (DECIDED)

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri A.S. Chandurkar, Advocate for the appellant.
Shri T.R. Kankale, AGP for the respondent Nos.1 and 2.
Shri Anil S. Kilor, Advocate for the respondent No.5.

CORAM : J.P. DEVADHAR &
B.P. DHARMADHIKAR, JJ.
29TH MARCH, 2007

In this Letters Patent Appeal, the appellant challenges the judgment dated 20th March, 2007 delivered by the learned Single Judge of this Court in Writ Petition No. 1049 of 2007.

The learned Single Judge has allowed writ petition filed by the present respondent No.5 and directed the respondent No.1, Collector to include his name in voters' list prepared under Rule 5 of Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971.

The dispute before the learned Single Judge was whether the order of Collector dated 17.02.2007 replacing the name of the petitioner (present respondent No.5) by name of present appellant was correct or not.

The learned Single Judge has found that as per

the provisions of Rule 5 sub Rule (2) of the said Rules, the delegate can be changed by society by passing a like resolution and it has been recorded that the present appellant was not sent as delegate by like resolution.

It is not in dispute that the name of the original petitioner was forwarded as consequences resolution passed by the General Body on 12.08.2006. The present appellant, who was respondent No.5 in writ petition, claimed that there was General Body Meeting on 13.08.2006 and in that meeting, name of one Vaijnath Kamble was sent as representative and as said Kamble expired, a resolution was passed by managing committee on 06.12.2006 and the name of the present appellant came to be forwarded in his place. All these aspects are considered by the learned Single Judge.

Shri A.S. Chandurkar, the learned Counsel for the appellant has contended that interpretation of phrase “like resolution” by the learned Single Judge is not proper, because he states that the General Body Meeting in which the name of Shri Kamble was selected on 13.08.2006 as delegate was Annual General Body Meeting. He further points out that the respondent No. 5 in this appeal claims that he has been selected as delegate on 12.08.2006 and the respondent No.5 also states that it was also Annual General Body Meeting. He

contends that in such circumstances, like resolution would require another Annual General Body Meeting of society for changing the delegate. It is not possible and in any case cannot be done within seven days of the last date prescribed for nomination in view of the provisions of Rule 5 sub Rule (2) of the Rules mentioned above. He has invited our attention to the judgment of the Hon'ble Apex Court in the case of Ram Bali Rajbhar .v. The State of West Bengal and others (reported in AIR 1975 SC 623) for the said purpose.

We have perused the said judgment. The reliance has been placed on para 12 of the said judgment. In para 12, the Hon'ble Apex Court has considered the provisions of Section 14 of Maintenance of Internal Security Act, 1977 and the perusal of reasonings clearly reveals that the word, “in the like manner and subject to the like sanctions and conditions (if any)” are extended to even case of second representation of detenu to advisory board because of Section 21 of General Clauses Act read with Section 14 of MISA, 1977. In the background in which these words are used in Section 21, the Hon'ble Apex Court has interpreted to mean that it implies similar and not identical manner and conditions. This ruling, therefore, does not help appellant at all. The position at hand is

entirely different. The provisions of Rule 5 sub Rule (2) are very clear. The requirement is of like resolution and we do not find that the learned Single Judge was, therefore, wrong in noticing that the present appellant who claimed that he was sent as representative on 06.12.2006 has not been forwarded by a like resolution i.e. by General Body.

The learned Counsel for the appellant has also invited our attention to the judgment of the Hon'ble Apex Court in the case of Pundlik .v. State of Maharashtra and others (reported in 2005(4) Mh.L.J., 254), particularly paragraph 14, to contend that once the Collector revised the resolution of change of delegate from Society as contemplated by Rule 5(2), the Collector is under obligation to effect change. There can be no dispute about this position and the learned Single Judge has not allowed petition by taking recourse to any such reasoning.

The next judgment is by the learned Single Judge in the case of Ramkishan Bhanudas Shinde and others .v. State of Maharashtra and others (reported in 1994 Mh.L.J., 1115) in which it is held that once the voters' list is published finally, any change in the same is not permissible, in exercise of powers of Registrar under Section 11 of the Maharashtra Cooperative Societies Act.

Scope and purpose of power of Registrar under Section 11 is well settled and the judgment is not relevant for considering the issue at hand. The judgment of the Hon'ble Apex Court in the case of Ramchandra Ganpat Shinde and another .v. State of Maharashtra and others (reported in 1993 (4) SCC 216) has been pointed out to contend that the learned Single Judge should not have interfered in the matter when the election process had already commenced and the petitioner ought to have been left free to file appropriate election dispute. The learned Counsel for the appellant has also relied upon the Judgment of the Division Bench of this Court in the case of Dalsing s/o Shamsing Rajput .v. State of Maharashtra and others (reported in 2006(3) Mh.L.J., 592) to contend that the remedy of filing election petition cannot be treated as alternate and equally efficacious remedy for the appellant. Reliance has been placed on para 6 of this judgment. For the reasons recorded in this para 6, we find that the learned Single Judge has not interfered with the election process at all and election process remains undisturbed. We, therefore, find that the reliance placed upon the judgment of the Apex Court in the case of Ramchandra Ganpat Shinde and another .v. State of Maharashtra and others (cited supra) is also misconceived. However the

Hon'ble Apex Court there also observed that the Court cannot interfere in the manner which would have effect of interdicting or retarding election midway. The facts in the impugned judgment clearly show that the learned Single Judge in the impugned order has not taken any such steps. The findings recorded by the learned Single Judge are neither perverse nor suffer from any jurisdictional error. We are, therefore, not entertaining the instant Letters Patent Appeal.

However, it is clarified that if the present appellant is required to file any Election Petition under Section 144T of Maharashtra Cooperative Societies Act, the observations made by this Court in this order or the observations made by the learned Single Judge while allowing the Writ Petition No. 1049 of 2007, will not come in the way of the appellant. The learned authority trying such election petition shall not be influenced in any way by said orders. The said authority shall try and decide the election petition, if any, on its own merits.

Letters Patent Appeal stands dismissed with no order as to costs.

JUDGE JUDGE

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